IN THE HIGH COURT OF DELHI

CR.P.No.417/2005

Smt.Bimla Devi ..... Appellant
! through: Mr.J.C.Mahendroo, Advocate

VERSUS

$ Smt.Neera Taneja & Ors. ..... Respondents
^ through: Mr.Rohit Jain, Advocate.

RESERVED ON: 9.7.2007

% DATE OF DECISION: 23.07.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. Petitioner, Smt.Bimla Devi, was the plaintiff. Alleging illegal dispossession from the suit property she filed a suit under Section 6 of the Specific Relief Act praying for a decree for possession in her favour.

2. She claimed possession to the suit property alleging that during his life time, late Shri K.L.Narang had allowed her to reside with him in the suit property as she was his

employee. That Shri K.L.Narang died on 9.2.2001. That he had bequeathed the suit property to her by and under a will dated 2.9.2000. That late Shri K.L.Narang was a widower and his children had abondoned him. That she used to work in the establishment of late Shri K.L.Narang at Karol Bagh for the last 20 years and additionally used to take care of Shri K.L.Narang. She stated that with the help of police, children and relatives of Shri K.L.Narang i.e. the defendants in the suit dispossessed her from the suit property on 14.6.2001.

3. Vide the impugned judgment and decree dated 7.9.2005, the suit has been dismissed holding that the issue of title predicated under the will could not form subject matter of an adjudication in a possessory suit filed under Section 6 of the Specific Relief Act. In respect of claim of the petitioner that she was in physical possession of the house, on analysing the evidence, learned Judge has opined that the petitioner had failed to establish that she was in physical possession of the house.

4. Defence by the children and relatives of late Shri K.L.Narang was that the petitioner was employed as a maid servant in the house of late Shri K.L.Narang. That the will in question was a forged document.

5. I do not intend to re-appreciate the evidence, not for

the reason that in a civil revision petition I cannot do so but for the simple reason, if concept of possession is correctly appreciated, there would be no requirement to appreciate the evidence.

6. Undisputedly, petitioner herself claimed that she was an employee and that her employer was late Shri K.L.Narang.

7. I may note the decision of learned Single Judge of this court reported as *Shyam Lal Vs. Rajinder Kumar* 1994 (Vol.30) DRJ 597 wherein it was observed; in para 13 as under :-

> "13. Possession is flexible term and is not necessarily restricted to mere actual possession of the property. The legal conception of possession may be in various forms. The two elements of possession are the corpus and the animus. A person though in physical possession may not be in possession in the eye of law, if the animus is lacking. On the contrary, to be in possession, it is not necessary that one must by in actual physical contact. To gain the complete idea of possession, one must consider
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> (i) the person possession
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> (ii) the things possessed and,
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> (iii) the persons excluded from possession.
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> A man may hold an object without claiming any interest therein for himself. A servant though holding an object, holds it for his master. He has, therefore, merely custody of the thing and not the possession which would always be with the master

> though the master may not be in actual contact of the thing. It is in this light in which the concept of possession has to be understood in the context of a servant and a master."

8. On the basis of the material on record, to state that the petitioner was in possession of the suit property would be a misnomer.

9. Possession of a servant is possession of the owner. As held in *Shyam Lal's* case (supra) a servant cannot be said to be having any interest in the suit property. It cannot be said that a servant can exercise such a possession or right to possess over the property as to exclude the master and the real owner which would include the successors-in-interest of the master.

10. I accordingly dismiss the civil revision petition.

11. It would be open to the petitioner to prove the will on which she relies and on succeeding, obtain appropriate relief.

12. But, before concluding I must express my anguish at the conduct of respondents who had abandoned their father during his life time. All alone by himself, the poor man must have lived a fairly miserable life. If case pleaded by the servant is correct that the petitioner, as a maid servant, has fabricated the will of their father, it would mean that the maid servant was confident that she could wrest the property from

the heirs of the deceased qua whom she may have evidence to show that the deceased had extreme dislike for them.

13. Children must realise that ethos of our culture is to respect our elders; to the extent of sacrificing our present as also our future for the comfort of our elders.

14. No costs.

15. LCR, if received, be returned.

July 23, 2007 PRADEEP NANDRAJOG, J.
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